

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

DONALD COX,
Plaintiff,

VS.

**SAM'S WEST, INC. and/or SAM'S
EAST, INC. and/or WAL-MART
STORES, INC. and/or WAL-MART
STORES TEXAS, LLC and/or SAMS
WHOLESALE CLUB #6259 and/or
SAM'S CLUB,
*Defendants.***

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**CIVIL ACTION NO. 1:24-cv-00842**

## JURY TRIAL REQUESTED

## **NOTICE OF REMOVAL**

Defendants **SAM’S WEST, INC.; SAM’S EAST, INC.; WAL-MART STORES, INC. AND WAL-MART STORES TEXAS, LLC** (hereinafter “Defendants”), file this Notice of Removal of the above-styled action pursuant to 28 U.S.C. § 1446(a) and would respectfully represent and show unto this Court the following:

### A. Introduction

1. Defendants have filed their Civil Cover Sheets pursuant to Local Rule 3.1 and Local Rule 81.1. *See Exhibit A.*

2. On or about June 25, 2024, Plaintiff **DONALD COX** (“Plaintiff”) initiated the state court lawsuit against Defendants in the 368<sup>th</sup> Judicial District Court of Williamson County, styled *Donald Cox v. Sam’s West, Inc. and/or Sam’s East, Inc. and/or Wal-Mart Stores, Inc. and/or Wal-Mart Stores Texas, LLC and/or Sams Wholesale Club # 6259 and/or Sam’s Club*; Cause No. 24-1203-C368 (the “State Court Action”). In the State Court Action, Plaintiff alleged a cause of action for premises liability against Defendants. In addition, Plaintiff seeks to recover damages for past and future medical expenses; past and future physical impairment; past and future lost wages and

loss of earning capacity; past and future physical pain and suffering; and mental anguish. *See Plaintiff's Original Petition*, attached hereto as **Exhibit B**.

3. The attorneys involved in the action being removed are listed as follows:

**Party and Party Type**

**Attorney(s)**

Plaintiff – Donald Cox

Paul D. Thorson  
Texas Bar No. 00797554  
WILLIAMS & THORSON LLP  
6444 Broadway  
Garland, Texas 75043  
Phone: 972-226-4900  
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Email: [paul@williamsthorson.com](mailto:paul@williamsthorson.com)

Defendants – Sam's West, Inc.; Sam's East, Inc.; Wal-Mart Stores, Inc.; and Wal-Mart Stores Texas, LLC

Brett H. Payne  
Texas Bar No. 00791417  
WALTERS, BALIDO & CRAIN, L.L.P.  
9020 N. Capital of Texas Highway  
Building I, Suite 170  
Austin, Texas 78759  
Phone: 512-472-9000  
Fax: 512-472-9002  
Email: [paynevfax@wbclawfirm.com](mailto:paynevfax@wbclawfirm.com)

4. The name and address of the court from which the case is being removed is as follows:

368<sup>th</sup> Judicial District Court  
The Honorable Sarah Bruchmiller  
Williamson County Courthouse  
405 M.L.K. St., Ste. 117, Box 8  
Georgetown, Texas 78626  
Phone: (512) 943-1368  
Fax: (512) 943-1285

**B. The Notice Of Removal Is Timely**

5. Defendants' agent was served with citation and a copy of Plaintiff's Original Petition on or about June 27, 2024. *See Exhibit C*. Pursuant to 28 U.S.C. § 1446(b), Defendants' Notice of Removal was filed within thirty (30) days after receipt by Defendants, through service

or otherwise, of a copy of an initial pleading from which it may first be ascertained that the case is one which is or has become removable.

**C. Complete Diversity & Amount In Controversy Is Over the Threshold**

6. Pursuant to the State Court Action, at the time of the filing of this Petition, Plaintiff Donald Cox was, and is still, a citizen and resident of Travis County, Texas.

7. Defendant Wal-Mart Stores Texas, LLC is now and was at the time of filing of this action a Delaware Limited Liability Company with its principal place of business in Arkansas. The citizenship of an LLC is the same as the citizenship of all of its members. *Harvey v. Grey Wolf Drilling, Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Wal-Mart Real Estate Business Trust is the sole member of Wal-Mart Stores Texas, LLC.

8. Wal-Mart Real Estate Business Trust is a statutory business trust organized under the laws of the State of Delaware with its principal place of business in Arkansas. The citizenship of a statutory trust is the citizenship of its members, which includes its shareholders. *Americold Realty Tr. v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1016 (2016); *Bynane v. Bank of New York Mellon for CWMBS, Inc. Asset-Backed Certificates Series 2006-24*, 866 F.3d 351, 358 (5th Cir. 2017); *U.S. Bank Tr., N.A. v. Dupre*, 615CV0558LEKTWD, 2016 WL 5107123, at \*4 (N.D.N.Y. Sept. 20, 2016) (finding that a Delaware statutory trust “seems precisely like the type [of trust] considered by the Supreme Court in *Americold*”). The sole unit/shareholder of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co.

9. A corporation is ““a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”” *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 314 (5th Cir. 2019) (quoting 28 U.S.C. § 1332(c)(1)). Wal-Mart Property Co. is an incorporated entity under the laws of the State of

Delaware with its principal place of business in Arkansas. Therefore, Wal-Mart Property Co. is a citizen of Delaware and Arkansas.

10. Defendant Wal-Mart, Inc. is now, and was at all times relevant hereto, an incorporated entity under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas. Defendant's corporate headquarters, including officers and directors, is located at 702 S.W. 8<sup>th</sup> Street, Bentonville, Arkansas 72716-8312.

11. Defendant Sam's East, Inc. is now, and was at all times relevant hereto, an incorporated entity under the laws of the State of Arkansas with its principal place of business in Bentonville, Arkansas. Defendant's corporate headquarters, including officers and directors, is located at 702 S.W. 8<sup>th</sup> Street, Bentonville, Arkansas 72716-8312.

12. Defendant Sam's Club West, Inc. is now, and was at all times relevant hereto, an incorporated entity under the laws of the State of Arkansas with its principal place of business in Bentonville, Arkansas. Defendant's corporate headquarters, including officers and directors, is located at 702 S.W. 8<sup>th</sup> Street, Bentonville, Arkansas 72716-8312.

13. Accordingly, for diversity purposes, Wal-Mart Stores Texas, LLC; Wal-Mart, Inc.; Sam's East, Inc.; and Sam's West, Inc. are citizens of Delaware and Arkansas. *MidCap Media Fin., L.L.C.*, 929 F.3d at 314.

14. In light of the foregoing, the parties are of completely diverse citizenship. *See* 28 U.S.C. §§ 1332(a), 1332(c)(1) 1441(b).

15. Further, the case involves an amount in controversy of more than \$75,000. *See* 28 U.S.C. § 1332(a). A court can determine that removal is proper from a plaintiff's pleadings if plaintiff's claims are those that are likely to exceed the jurisdictional amount. *See Allen v. R&H Oil & Gas., Co.*, 63 F.3d 1326, 1335 (5<sup>th</sup> Cir. 1995); *De Aguilar v. Boeing Co.*, 11 F.3d 55, 57 (5<sup>th</sup>

Cir. 1993). In the State Court Action, Plaintiff alleges he seeks “monetary relief of \$250,000, but not more than \$1,000,000.” See **Exhibit B**. Thus, the amount in controversy in the instant case meets the requirements for removal.

16. Copies of all pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). See **Exhibit D**.

#### **D. Basis for Removal**

17. Because this is a civil action of which the District Courts of the United States have original jurisdiction, this case may be removed by this Court pursuant to 28 U.S.C. § 1446(b). Further, because Plaintiff is a citizen and resident of Texas, Defendants’ principal places of business are located in Arkansas, and the amount in controversy exceeds \$75,000.00, the Court has subject matter jurisdiction based on diversity of citizenship and residency. 28 U.S.C. § 1132. As such, this removal action is proper.

#### **E. Filing of Notice with State Court**

18. Promptly after filing this Notice of Removal, Defendants will give written notice of the removal to Plaintiff through his attorney of record and to the clerk of the state court action.

#### **F. Prayer**

19. **WHEREFORE, PREMISES CONSIDERED**, Defendants Sam’s West, Inc.; Sam’s East, Inc.; Wal-Mart Stores, Inc.; and Wal-Mart Stores Texas, LLC request that this Court proceed with the handling of this cause of action as if it had been originally filed herein, that this Court make such orders, if any, and take such action, if any, as may be necessary in connection with the removal of the state court action to this Court, and that they have such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

BY: /s/ Brett H. Payne  
Brett H. Payne  
Texas Bar Number 00791417  
Odalis Covarrubias  
Texas Bar Number 24137906  
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**ATTORNEY FOR DEFENDANTS  
SAM'S WEST, INC.; SAM'S EAST, INC.;  
WAL-MART STORES, INC.; AND  
WAL-MART STORES TEXAS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was delivered via electronic service in accordance with the Federal Rules of Civil Procedure, on the 26<sup>th</sup> day of July 2024 to the following parties or attorneys of record:

Paul D. Thorson  
WILLIAMS & THORSON LLP  
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Garland, Texas 75043  
Phone: 972-226-4900  
Fax: 972-226-4903  
Email: [paul@williamsthorson.com](mailto:paul@williamsthorson.com)

/s/ Brett H. Payne  
BRETT H. PAYNE